



CALIFORNIA STATE PERSONNEL BOARD

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June 8, 2006

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SEIU, Local 1000 (CSEA)
1108 "O" Street
Sacramento, CA 95814

B. J. McNamara, Commander
Department of the California Highway Patrol
Business Services Section
P.O. Box 942898
Sacramento, CA 94298-0001

Neil H. O'Donnell, Esq.
Rogers, Joseph, O'Donnell & Phelps
311 California Street
San Francisco, CA 94104

Re: REQUEST FOR REVIEW OF UNARMED SECURITY GUARD MASTER SERVICE
AGREEMENT BETWEEN THE DEPARTMENT OF THE CALIFORNIA HIGHWAY
PATROL AND INTER-CON SECURITY SERVICES, INC.
[SPB FILE NO. 06-001(a)]

REQUEST FOR REVIEW OF UNARMED SECURITY GUARD EMERGENCY
AGREEMENT BETWEEN THE DEPARTMENT OF THE CALIFORNIA HIGHWAY
PATROL AND INTER-CON SECURITY SERVICES, INC.
[SPB FILE NO. 06-002(b)]

Dear Ms. Giese and Messrs. McNamara and O'Donnell:

By letter dated January 5, 2006, pursuant to Government Code section 19131,¹ the Department of the California Highway Patrol (CHP) asked the State Personnel Board (SPB) to review for compliance with Section 19130(a), the proposed Master Service Agreement (MSA) (Agreement No. 5C065001-0), with Inter-Con Security Services, Incorporated (Inter-Con) for the provision of unarmed security guard services² at various state agencies and departments. The term of the MSA was from February 1, 2006, through January 31, 2009. By letter dated January 12, 2006, SPB staff requested that CHP provide additional information in support of its request. Prior to the CHP responding to the request for additional information, by letter dated January 18, 2006, Service Employees International Union, Local 1000 (CSEA), requested, pursuant to the provisions of Section 19134 and Title 2, California Code of Regulations, section 547.59 et seq.,

¹ Unless otherwise indicated, all Section references are to the Government Code.

² Under the MSA, Inter-Con would provide personnel to provide Security Guard I and Security Guard II services

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that the SPB review the MSA for compliance with the provisions of Section 19130(b). The SPB subsequently notified CSEA that the MSA was already being reviewed for compliance with the provisions of Section 19130(a), and that CSEA would be afforded an opportunity to challenge the validity of the MSA in accordance with the provisions of that section. On February 9, 2006, the CHP provided the SPB with the additional information that the SPB had requested on January 12, 2006, regarding the MSA. In correspondence to the SPB dated March 6, 2006, CSEA set forth its reasons why the MSA should not be approved pursuant to Section 19130(a).

In addition, by letter dated February 9, 2006, the CHP also requested that the SPB approve the MSA as an "Emergency Agreement" for the period of February 1, 2006 through July 31, 2006. The CHP did not include a basis for the approval of the MSA as an Emergency Agreement. By letter dated February 15, 2006, pursuant to Section 19134 and Title 2, California Code of Regulations, section 547.59 et seq., CSEA asked the SPB to review the proposed MSA Emergency Agreement for compliance with Section 19130(b).

By letter dated March 14, 2006, Inter-Con filed a motion with the SPB to intervene in the proceedings, pursuant to the provisions of Title 2, California Code of Regulations, section 547.68. Inter-Con's motion was subsequently granted, and on April 5, 2006, Inter-Con filed its response to CSEA's request that both the MSA and the MSA Emergency Agreement be disapproved by the SPB.

By letter dated April 6, 2006, the CHP set forth its reasons why the SPB should approve the MSA Emergency Agreement.

By correspondence dated April 21, 2006, CSEA submitted its reply to Inter-Con's response. Both the MSA and the MSA Emergency Agreement were thereafter deemed submitted for review by the Executive Officer.

Arguments of the Parties

Cost-Savings Contract

The CHP asserts that the MSA is justified as a cost-savings agreement pursuant to the provisions of Sections 19130(a) and 19134, and Title 2, California Code of Regulations, sections 547.69 and 547.71. More specifically, the CHP contends that the base salary for a Security Guard I is \$12.31 and that, with benefits added, the hourly cost for a civil service Security Guard I is \$21.47, for a total annual cost of \$25,607,741.34. Because Inter-Con would perform those same services for \$23,884,530.76, the CHP contends that the State would save \$1,723,210.58, or seven percent per year, if Inter-Con were to perform those same services. (See Attachment 1.) The CHP also contends that the base salary for a Security Guard II is \$12.75 and that, with benefits added, the hourly cost for a civil service Security Guard II is \$22.18 per hour, for a total annual cost of \$7,922,496.38. Because Inter-Con would perform those same services for \$7,489,403.41, the CHP contends that the State would save \$433,092.97, or six percent per year, if Inter-Con were to perform those same services. (See Attachment 2.)

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In its argument, Inter-Con asserts that the CHP actually understates the cost-savings achieved by the MSA. In support of that contention, Inter-Con maintains that the actual base hourly wage for a Security Guard II is \$12.93, as opposed to the \$12.75 set forth by the CHP. Inter-Con also contends that the CHP's calculation of appropriate taxes and insurance did not necessarily include base wages, coverage for holidays, personal days, vacation and sick leave, and training wages. Nor did CHP include health, dental and vision insurance, or retirement benefits into its calculations. Similarly, the CHP failed to include the cost of providing vehicles to perform security duties. Inter-Con further maintains that the CHP failed to include the cost for managing the security force, and points out that the MSA requires Inter-Con to provide Contract Guard Supervisors (CGS) at no cost to the State. Nor did the CHP include program management costs (support personnel, dispatchers, etc.) in its calculations. Inter-Con estimates the supervisor and program management costs to be well in excess of \$775,000.00 annually.

For its part, CSEA disputes that any actual cost savings will be realized through the MSA. Contrary to the CHP's calculations, CSEA maintains that the base salary for a Security Guard I is \$11.72 (not \$12.31), and that when all appropriate benefits are calculated,³ the actual hourly cost for a Security Guard I is \$18.98 (not \$21.47), for a total annual cost of \$22,637,863.56. Because the annual cost for Inter-Con to provide those services is \$23,884,530.76, CSEA maintains that the MSA would cost the State an additional \$1,246,667.20 for Inter-Con to perform those services. (See Attachment 1.) CSEA also contends the base salary for a Security Guard II is \$12.31 (not \$12.75), and that when all appropriate benefits are calculated,⁴ the hourly cost for a Security Guard II is \$12.31 (not \$12.75), for a total annual cost of \$7,086,669.44. Because the annual cost for Inter-Con to provide those services is \$7,489,403.41, CSEA maintains that the MSA would cost the State an additional \$402,733.97 for Inter-Con to perform those same services. In addition, CSEA maintains that the CHP failed to include any costs for the State to oversee and administer the MSA. CSEA estimates those costs to be at approximately three percent of the MSA cost, for a total annual cost of \$941,218.02.

Emergency Contract

The CHP asserts that, because the prior contract for unarmed security guard services was due to expire on January 31, 2006, and because the SPB had not yet granted approval for the cost savings MSA that the CHP had submitted to the SPB on January 9, 2006, the Department of General Services recommended that the CHP prepare an emergency contract for unarmed security guard services to ensure that there was no lapse in coverage for departments statewide. On February 8, 2006, DGS approved the Emergency Agreement for a six-months period. Similarly, Inter-Con asserts that the Emergency Agreement is justified because the unexpected delay in the CHP obtaining approval from the SPB for the MSA created the urgent need for the services, so that unarmed security guard services could be provided for departments.

³ CSEA contends that the CHP improperly calculated OASDI and Workers' Compensation Insurance into the benefits package.

⁴ Ibid.

CSEA, on the other hand, maintains that the Emergency Agreement is not justified, because the CHP had ample notice of the expiration of the existing contract, yet it did not take reasonable steps to ensure that it had obtained SPB approval for the new MSA prior to the expiration of the old contract, or to ensure civil service employees had been hired to perform the duties contemplated under the MSA. As a result, CSEA contends that the CHP created the "emergency" by failing to take timely action to ensure continuing unarmed security guard coverage for the State, and that such situations do not constitute the type of "emergency" situations contemplated by Section 19130(b)(10).

Analysis

Cost Savings Contract

There is a significant dispute between the parties with respect to not only the hourly base salary rates earned by civil service security guards, but also with respect to the correct computation of benefits earned by civil service employees. The correct calculation of employee benefits is, however, the more significant of those differences. Section 19134 (a) provides, in pertinent part, that:

Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing ... security guard services shall include provisions for employee wages and benefits that are valued at least 85 percent of the state employer cost of wages and benefits provided to state employees for performing similar duties.

Section 19134(b) thereafter provides that: "For purposes of this section, 'benefits' includes 'health, dental, retirement, and vision benefits and holiday, sick, and vacation pay.'" Noticeably absent from the list of "benefits" to be included as state costs for the employment of civil service employees are unemployment insurance (OASDI) and workers compensation insurance (SCIF). Consequently, the CHP erred in including both OASDI and SCIF costs in its calculation of civil service employee benefits.

When the hourly costs of employing civil service Security Guard Is and Security Guard IIs are calculated without reference to OASDI and SCIF costs, the hourly cost of employing a Security Guard I is, at most, \$19.84.⁵ That will result in an annual cost of \$23,663,604.48 to employ civil service Security Guard Is, as opposed to the annual MSA cost of \$23,884,530.76. That, in turn, means that it will cost the State an additional \$220,926.28 annually for Inter-Con to provide Security Guard I services.⁶ (See Attachment 1.)

⁵ The \$19.84 amount is based upon CHP's estimate of a base salary at \$12.31. If the CSEA base salary of \$11.72 is utilized, the hourly cost is \$18.98.

⁶ If CSEA's \$11.72 base salary is used, the annual cost would be \$22,637,863.56, in which case it would cost the state an additional \$1,246,667.20 to employ Inter-Con employees.

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With respect to Security Guard II employees, the hourly cost of employing a Security Guard II is \$20.49.⁷ That will result in an annual cost of \$7,318,843.59 to employ civil service Security Guard IIs, as opposed to the annual MSA cost of \$7,489,403.41. That, in turn, means that it will cost the State an additional \$170,559.82 annually for Inter-Con to provide Security Guard II services.⁸ (See Attachment 2.) To the extent that Inter-Con asserts that the true base salary for a civil service Security Guard II position is \$12.93 per hour, the total annual cost for civil service employees to perform those duties would be \$7,415,285.10, meaning that it will cost the State an additional \$74,118.31 annually for Inter-Con to provide Security Guard II services. (See Attachment 3.)

With respect to Inter-Con's assertion that the CHP's cost calculations did not necessarily take into account correct base wages, coverage for holidays, personal days, vacation and sick leave, and training wages, a review of the CHP's calculations clearly indicates that the CHP did take those costs into consideration. Likewise, the CHP's calculations did take into consideration health, dental and vision insurance benefits, plus retirement benefits. With respect to Inter-Con's assertion that the CHP improperly excluded the cost of providing vehicles to the security force,⁹ paragraph n.(2) of the MSA clearly provides that, "If the motor vehicle is provided by the Contractor, Contractor shall be reimbursed based on rental rates which are consistent with those generally applicable in the same area." As a result, there is no cost savings to the State under the MSA for purposes of providing vehicles for security guards.

Inter-Con further asserts that the CHP ignored the costs associated with managing the security force, as the MSA requires Inter-Con to assume the full cost of providing CGS' to supervise the security force. Inter-Con places the value of this service at approximately \$775,000.00 annually. A review of the MSA indicates that the CGS is required to conduct one unannounced visit each day at each security guard location. Because it is apparent that the Building Manager or other appropriate representative for each work site employing security guards can just as easily make one unannounced visit each day to each security guard location, and that such minor duties can be provided at *de minimis* cost to the State, I do not believe it appropriate to include the \$775,000.00 as an additional cost to the State.

Finally, although Inter-Con maintains that the CHP failed to include program management costs worth several hundred thousands of dollars annually in its costs, I believe that Inter-Con has overstated the cost of those functions should the State provide them, as each agency or department employing security guards can simply absorb, at *de minimis* expense, the administrative costs inherent to employing additional security guard employees.

In that same respect, as CSEA correctly points out, the CHP failed to include the cost to the State of overseeing and administering the MSA. While I do not agree that CSEA's asserted annual cost of \$941,218.02 to oversee and administer the MSA is reasonable, I recognize that there is a

⁷ The \$20.49 amount is based upon CHP's estimate of a base salary at \$12.75. If the CSEA base salary of \$12.31 is utilized, the hourly cost is \$19.84.

⁸ If CSEA's \$12.31 base salary is used, the annual cost would be \$7,086,669.44, in which case it would cost the state an additional \$402,733.97 to employ Inter-Con employees.

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more than minimal cost associated with that function. Nonetheless, because I find that there are insufficient cost savings associated with the MSA to justify its approval under Section 19130(a), regardless of whether the cost of overseeing and administering the contract is taken into account, there is no need to reach the issue of what is a reasonable cost associated with performing that function.

Emergency Contract

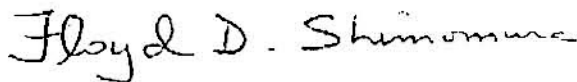
Section 19130(b)(10) authorizes a state agency to enter into a personal services contract when, "The services are of such an urgent, temporary, or occasional nature that the delay incumbent upon their implementation under civil service would frustrate their very purpose." CSEA is correct in its assertion that the services provided under the Emergency Agreement are not the type of "urgent, temporary, or occasional" services envisioned by Section 19130(b)(10). Instead, it is quite clear that the needed services are predictable, permanent and constant, and the State's urgent need for the services is occasioned simply because the CHP did not seek timely review of the MSA under Section 19130(a). That is particularly so as the old contract was scheduled to expire on January 31, 2006, yet the SPB did not receive the CHP's request for approval of the MSA until January 9, 2006. The CHP should reasonably have anticipated that, if CSEA challenged the MSA, the SPB simply could not have approved the MSA prior to the expiration of the prior contract. Nevertheless, I am also cognizant of the severe ramifications that would result to the State should the Emergency Agreement not be approved, thereby resulting in no security guard services being provided at a large number of State work sites. As a result, I find that the Emergency Agreement is justified, given the unique circumstances presented here.

Conclusion

Although the Department has not submitted sufficient information to demonstrate that the MSA is authorized under Government Code section 19130(a), it has presented sufficient information to establish that the Emergency Agreement is justified under Section 19130(b)(10). I am, therefore, disapproving the MSA, and approving the Emergency Agreement.

This letter constitutes my decision to disapprove the MSA, and to approve the Emergency Agreement. Any party has the right to appeal this decision to the five-member State Personnel Board pursuant to Title 2, California Code of Regulations, section 547.66. Any appeal should be filed no later than 30 days following receipt of this letter in order to be considered by the Board.

Sincerely,



Floyd D. Shimomura
Executive Officer

Attachment 1

SECURITY GUARD I

CHP Base Salary (2,080 hrs @ \$12.31)	\$25,604.80	
CSEA Base Salary (2,080 hrs @ \$11.72)	\$24,377.60	(-\$1,227.20)
CHP Benefits (\$25,604.80 @ 44.144%) ¹	\$11,302.96	
CSEA Benefits (\$24,377.60 @ 30.914%) ²	\$ 7,536.09	(-\$3,766.89)
Back-up Coverage		
CHP Holidays (104 hrs @ \$12.31)	\$1,280.24	
CSEA Holidays (104 hrs @ \$11.72)	\$1,218.88	(-\$61.36)
CHP Pers Holiday (8 hrs @ \$12.31)	\$98.48	
CSEA Pers Holiday (8 hrs @ \$11.72)	\$93.76	(-\$4.72)
CHP Vacation (80 hrs @ \$12.31)	\$984.80	
CSEA Vacation (80 hrs @ \$11.72)	\$937.60	(-\$47.20)
CHP Sick Leave (69 hrs @ \$12.31)	\$849.39	
CSEA Sick Leave (69 hrs @ \$11.72)	\$808.68	(-\$40.71)
Equipment		
CHP 2-way Radio	\$2,000.00	
Uniform Allowance	\$ 450.00	
Miscellaneous		
CHP Background (16 hrs @ \$69.29)	\$1,108.64	
CHP Training (80 hrs @ \$12.31)	\$984.80	
CSEA Training (80 hrs @ \$11.72)	\$937.60	(-\$47.20)
CHP Total	\$44,664.13	
CSEA Total	\$39,468.85	(-\$5,195.28)
CHP Hourly Cost (\$44,664.13 / 2,080 hrs)	\$21.47	
CSEA Hourly Cost (\$ 39,468.85 / 2,080 hrs)	\$18.98	(-\$2.49)

¹ Includes: 1.45% MediCare; 13.522% health, dental and vision insurance; 15.942% retirement; 6.2% OASDI, 7.03% State Compensation (SCIF).

² Does not include 6.2% OASDI or 7.03% SCIF.

SECURITY GUARD I

Hours per year:	1,192,722	
Contractor Cost:	\$23,84,530.76	
CHP Cost (\$21.47 p/hr)	\$25,607,741.34	(+\$1,723,210.58)
CSEA Cost (\$18.98 p/hr): ¹	\$22,637,863.56	(-\$1,246,667.20)
CSEA Cost (\$19.84 p/hr): ²	\$23,663,604.46	(-\$ 220,926.28)

¹ Assumes \$11.72 p/hr base salary, but does not include OASDI or SCIF costs.

² Assumes \$12.31 p/hr base salary, but does not include OASDI or SCIF costs

Attachment 2

SECURITY GUARD II

CHP Base Salary (2,080 hrs @ \$12.75)	\$26,520.00	
CSEA Base Salary (2,080 hrs @ \$12.31)	\$25,604.80	(-\$915.20)
CHP Benefits (\$26,520.00 @ 44.144%) ¹	\$11,706.99	
CSEA Benefits (\$25,604.80 @ 30.914%) ²	\$ 7,915.47	(-\$3,791.52)
Back-up Coverage		
CHP Holidays (104 hrs @ \$12.75)	\$1,326.00	
CSEA Holidays (104 hrs @ \$12.31)	\$1,280.24	(-\$45.76)
CHP Pers Holiday (8 hrs @ \$12.75)	\$102.00	
CSEA Pers Holiday (8 hrs @ \$12.31)	\$ 98.48	(-\$3.52)
CHP Vacation (80 hrs @ \$12.75)	\$1,020.00	
CSEA Vacation (80 hrs @ \$12.31)	\$ 984.80	(-\$35.20)
CHP Sick Leave (69 hrs @ \$12.75)	\$879.75	
CSEA Sick Leave (69 hrs @ \$12.31)	\$849.39	(-\$30.36)
Equipment		
CHP 2-way Radio	\$2,000.00	
Uniform Allowance	\$ 450.00	
Miscellaneous		
CHP Background (16 hrs @ \$69.29)	\$1,107.52	
CHP Training (80 hrs @ \$12.75)	\$1,020.00	
CSEA Training (80 hrs @ \$12.31)	\$ 984.80	(-\$35.20)
CHP Total	\$46,132.26	
CSEA Total	\$41,275.50	(-\$4856.76)
CHP Hourly Cost (\$46,132.26 / 2,080 hrs)	\$22.18	
CSEA Hourly Cost (\$41,275.50 / 2,080 hrs)	\$19.84	(-\$2.34)

¹ Includes: 1.45% MediCare; 13.522% health, dental and vision insurance; 15.942% retirement; 6.2% OASDI; 7.03% State Compensation (SCIF).

² Does not include 6.2% OASDI or 7.03% SCIF.

SECURITY GUARD II

Hours per year:	357,191	
Contractor Cost:	\$7,489,403.41	
CHP Cost (\$22.18 p/hr):	\$7,922,496.38	(+\$433,092.97)
CSEA Cost (\$19.84 p/hr): ¹	\$7,086,669.44	(-\$402,733.97)
CSEA Cost (\$20.49p/hr): ²	\$7,318,843.59	(-\$170,559.82)

¹ Assumes \$12.31 p/hr base salary, but does not include OASDI or SCIF costs

² Assumes \$12.75 p/hr base salary but does not include OASDI or SCIF costs

Attachment 3

SECURITY GUARD II

InterCon Base Salary (2,080 hrs @ \$12.93)	\$26,894.40	
CSEA Base Salary (2,080 hrs @ \$12.31)	\$25,604.80	(-\$1,289.60)
InterCon Benefits (\$26,520.00 @ 44.144%) ¹	\$11,872.26	
CSEA Benefits (\$25,604.80 @ 50.914%) ²	\$ 7,915.47	(-\$3,956.79)
Back-up Coverage		
InterCon Holidays (104 hrs @ \$12.93)	\$1,344.72	
CSEA Holidays (104 hrs @ \$12.31)	\$1,280.24	(-\$64.48)
InterCon Pers Holiday (8 hrs @ \$12.93)	\$103.44	
CSEA Pers Holiday (8 hrs @ \$12.31)	\$ 98.48	(-\$4.96)
InterCon Vacation (80 hrs @ \$12.75)	\$1,034.40	
CSEA Vacation (80 hrs @ \$12.31)	\$ 984.80	(-\$49.60)
InterCon Sick Leave (69 hrs @ \$12.75)	\$892.17	
CSEA Sick Leave (69 hrs @ \$12.31)	\$849.39	(-\$42.78)
Equipment		
CHP/InterCon 2-way Radio	\$2,000.00	
Uniform Allowance	\$ 450.00	
Miscellaneous		
CHP Background (16 hrs @ \$69.29)	\$1,107.52	
InterCon Training (80 hrs @ \$12.93)	\$1,034.40	
CSEA Training (80 hrs @ \$12.31)	\$ 984.80	(-\$49.60)
InterCon Total	\$46,733.31	
CSEA Total	\$41,275.50	(-\$5,457.81)
CHP Hourly Cost (\$46,132.26 / 2,080 hrs)	\$22.47	
CSEA Hourly Cost (\$ 41,275.50 / 2,080 hrs)	\$19.84	(-\$2.63)

¹ Includes: 1.45% MediCare; 13.522% health, dental and vision insurance; 15.942% retirement; 6.2% OASDI, 7.03% State Compensation (SCIF)

² Does not include 6.2% OASDI or 7.03% SCIF

SECURITY GUARD II – INTER-CON

Hours per year:	357,191	
Contractor Cost:	\$7,489,403.41	
Inter-Con Cost (\$22.47 p/hr):	\$8,026,081.70	(+\$536,678.30)
CSEA Cost (\$19.84 p/hr): ¹	\$7,086,669.44	(-\$402,733.97)
CSEA Cost (\$20.76 p/hr): ²	\$7,415,285.10	(-\$ 74,118.31)

¹ Assumes \$12.31 p/hr base salary, but does not include OASDI or SCIF costs.

² Assumes \$12.93 p/hr base salary, but does not include OASDI or SCIF costs.